



HUNTON & WILLIAMS LLP  
RIVERFRONT PLAZA, EAST TOWER  
951 EAST BYRD STREET  
RICHMOND, VIRGINIA 23219-4074

TEL 804 • 788 • 8200  
FAX 804 • 788 • 8218

HARRY M. JOHNSON, III  
DIRECT DIAL: 804 • 788 • 8784  
EMAIL: [pjohnson@hunton.com](mailto:pjohnson@hunton.com)

FILE NO: 29142.080072

March 15, 2016

**Submitted via FOIA Online**

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20004

**Re: Freedom of Information Act Request**

Dear Sir or Madam:

I represent the Utility Water Act Group, Southwestern Electric Power Company, and Union Electric Company (d/b/a Ameren Missouri) in litigation involving EPA's recently issued final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category (the "ELG Rule"). On November 3, 2015, EPA issued ELG Rule pursuant to the Clean Water Act. 80 Fed. Reg. 67,838. Since that time, EPA has publicly released many documents or portions thereof from the rulemaking record supporting the ELG Rule, but has withheld many of the same on the basis that they may contain confidential business information ("CBI").

This is a request pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and EPA's FOIA regulations, 40 C.F.R. Part 2, for EPA to release additional records<sup>1</sup> from the ELG Rule rulemaking record. Attachment A lists the specific documents that we are requesting.

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<sup>1</sup> The term "records" as used herein includes originals, drafts, and non-identical copies of the same, whether printed or reproduced by any means, and includes, but is not limited to, correspondence, letters, memoranda, notes, emails, inter- or intra-office agency or departmental communications, summaries of personal or telephone conversations or interviews, minutes or records of meetings or conferences (including meetings of boards, committees, sub-committees, or any individual member thereof), press releases, telegrams, telexes, books, preliminary and final reports, logs, diaries, audio recordings, video recordings, computer files, charts, notebooks, calendars, statistical statements, tables, tabulations, calculations, data, diagrams, plans, drawings, blueprints, and orders, opinions or reports of consultants, experts, engineers, accountants, or analysts.

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The requested records and portions of records all meet the following criteria: (1) they are considered part of the ELG Rule rulemaking record under applicable law; (2) they relate to communications and information exchanged between EPA and vendors between June 7, 2013, and November 3, 2015; and (3) they have been withheld from the public rulemaking record on the basis that they contain CBI (hereinafter "Vendor CBI"). The term "vendors" as used herein means individuals, private companies, and other entities that are not themselves members of the regulated Steam Electric Power Generating Point Source Category, but who, whether voluntarily or otherwise, provided EPA with information on products or processes that could be used by members of the Steam Electric Power Generating Point Source Category to try to achieve compliance with the proposed or final ELG Rule.

To illustrate the type of document that is responsive to this request, I direct your attention to Data – CBI Updated ABMet Cost Curve, Oct. 2015, EPA-HQ-OW-2009-0819-5658, which is listed in Attachment A. The abstract for this document states that it contains "updated costs for the ABMet system...based on flow rate as of July 2014." This represents information that is fundamental to the ELG Rule because EPA used it to determine EPA's cost methodology for the flue gas desulfurization wastewater limits, yet EPA has failed to make it available for public review. Another example from Attachment A is CBI Draft Memorandum to the Steam Electric Rulemaking Record: Email and Telephone Communications between United Conveyor Corporation (UCC), EPA, and ERG Discussing Ash Handling Conversions, Oct. 2015, EPA-HQ-OW-2009-0819-6160. As with the above, this document memorializes discussions with a vendor on which EPA relied to set ash transport wastewater limits, yet it has not been made available for public review. These and many other documents fall within the scope of this request and must be disclosed to the public, given that they explain EPA's basis for the ELG Rule and given that they appear to have been prompted by public comments on EPA's proposal.

*In addition to the records listed in Attachment A, please provide a copy of EPA's response to any FOIA request by any party seeking documents relating to vendor communications regarding the ELG Rule, as well as copies of any documents produced in response to such a request.*

If an exemption or denial under FOIA is claimed for any of the above, I request that you furnish us with all non-exempt portions of such records, as required under the law. I further request that, regardless whether the disclosure of a record is denied in whole or in part, EPA provide us with the following information regarding such withheld records or portions thereof:

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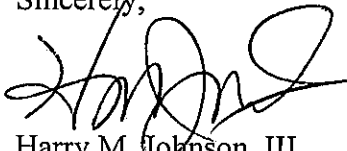
1. the title of the record;
2. the date of the record;
3. a description of the general nature and subject matter of the record;
4. the identity of the author or authors of the record;
5. the identity of all persons who received the record; and
6. the reasons for the claim of exemption.

My clients are willing to pay appropriate fees attributable to this request and to make whatever payment arrangements are necessary. Under 40 C.F.R. § 2.107(b), the fee category is "commercial use request." However, please contact me if you estimate that the fees will exceed \$2,000. I request that these documents be provided in electronic format.

Pursuant to 40 C.F.R. § 2.104(a), it is my understanding that we will receive a response within 20 working days from the date this request is received. Please direct copies of the information requested and all correspondence regarding this request to my attention at the above address.

Thank you for your attention to this request. If you have any questions, please contact me at (804) 788-8784.

Sincerely,



Harry M. Johnson, III  
*Counsel for Utility Water Act Group,  
Southwestern Electric Power Company, and  
Union Electric Company (d/b/a Ameren Missouri)*

**Attachment A**

**Preliminary Index of Vendor CBI**

<b>Docket Number (EPA-HQ-OW-2009-0819)</b>	<b>DCN No.</b>	<b>Title</b>	<b>Abstract</b>
6215	SE05966	Data – CBI Email from UCC with Comments on Draft Ash Handling Documentation	CBI –Email delivering UCC comments on the UCC ash handling documentation memorandum to the record.
6215 ATT. 1	SE05966.A1	CBI – Draft Memorandum for UCC Ash Handling Documentation with UCC Comments	CBI –UCC comments on the UCC ash handling documentation memorandum to the record.
6229	SE05916	CBI Memorandum to the Steam Electric Rulemaking Record: Ash Handling Documentation from Communications with United Conveyor Corporation	CBI – Memorandum documenting the calls, meetings, and data between UCC, EPA, and ERG starting January 14, 2014.
6229 ATT. 1	SE05941A1	CBI –Database Dictionary for the Estimating Reduced Impoundment Capacities for Avoided Impoundment Failures Calculation Database	CBI – Database dictionary containing a description of the tables, fields, and queries in the Estimating Reduced Impoundment Capacities for Avoided Impoundment Failures Calculation Database.
6151	SE05922	Data – CBI Draft UCC Ash Handling Documentation Attachments 1 through 8 for UCC Review	CBI Attachments 1 through 8 to the UCC ash handling documentation. These attachments include fly ash and bottom ash handling conversion data delivered to UCC on September 9, 2015 for review. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
6160	SE05938	CBI Draft Memorandum to the Steam Electric Rulemaking Record: Email and Telephone Communications between United Conveyor Corporation (UCC), EPA, and ERG Discussing Ash Handling Conversions	CBI – Draft compilation of all calls, emails, and attachments between United Conveyor Corporation (UCC), EPA, and ERG following the public comment period discussing ash handling conversions delivered to EPA for review.
6160 ATT. 1	SE05938.A1	CBI –Draft Sanitized UCC Ash Handling Documentation Attachments 1 through 8 for UCC Review	CBI – Attachments 1 through 8 to the UCC ash handling documentation. These attachments include fly ash and bottom ash handling conversion data delivered to UCC on September 9, 2015 for review.
6160 ATT. .2	SE05938.A2	CBI – SE05938 Appendix A - Draft Email Documentation between UCC, EPA, and ERG	CBI –Appendix A to the UCC ash handling documentation (to be combined with the memorandum). All email communications between UCC, EPA, and ERG.

<b>Docket Number (EPA-HQ-OW-2009-0819)</b>	<b>DCN No.</b>	<b>Title</b>	<b>Abstract</b>
6153	SE05927	Data – CBI Clyde Bergemann Power Group ASHCONTM No. 1 Design	CBI Clyde Bergemann Power Group design data for ASHCONTM installations.
6154	SE05928	Data – CBI Clyde Bergemann Power Group ASHCONTM No. 2 Design	CBI Clyde Bergemann Power Group design data for ASHCONTM installations.
6155	SE05929	Data – CBI Clyde Bergemann Power Group Dewatering Bin Design	CBI Clyde Bergemann Power Group design data for dewatering bin installations.
6156	SE05930	Data – CBI Clyde Bergemann Power Group DRYCONTM Design	CBI Clyde Bergemann Power Group design data for DRYCONTM installations.
6151	SE05922	Data – CBI Draft UCC Ash Handling Documentation Attachments 1 through 8 for UCC Review	CBI Attachments 1 through 8 to the UCC ash handling documentation. These attachments include fly ash and bottom ash handling conversion data delivered to UCC on September 9, 2015 for review. This document contains CBI and is not available online or from the USEPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
5649	SE04204	Data – CBI - GE Response to Post Proposal Questions	CBI – Answers provided by GE in response to our questions regarding issues raised during the comment period.
5658	SE04230	Data – CBI Updated ABMet Cost Curve	CBI – New cost curve from GE to reflect updated costs for the ABMet system. This new costing data includes updated installed costs based on flow rate as of July 2014. This document contains CBI and is not available online or from the EPA Docket Center. Please contact the Document Control Officer listed in the Federal Register.
5691	SE00751	Data – CBI GE ABMet Backwash Information	CBI
5718	SE04234	CBI Email RE: Clarification on Updated ABMet Costs from June 2014	CBI. CBI Documentation of follow up questions provided to GE regarding some outstanding questions based on their updated costing data for the ABMet system. GE provided updated costs for the ABMet system via email in June 2014 (SE04230). EPA and ERG responded
5825	SE00753	Data – CBI ABMet GE Response to EPA memo -	CBI. CBI ERG submitted a request for costing information to update the costing module for biotreatment

<b>Docket Number (EPA-HQ-OW-2009-0819)</b>	<b>DCN No.</b>	<b>Title</b>	<b>Abstract</b>
		041111	of FGD scrubber purge wastewater using GE's ABMet system. GE provided responses to questions on determining total system costs and on GE's cost design bases
6456	SE06361	CBI GE ABMet Pilot Study Report	CBI Report from GE Water describing results of a pilot study conducted using its ABMet biological treatment system.
5735	SE05692	Meeting Materials – CBI Notes from Call with GE Water on April 14, 2014	CBI – Call with GE discussing ORP treatment at a coal-fired power plant. This document contains CBI and is not available online or from the EPA Docket Center.
6185	SE06304	Data – CBI Notes from Call with GE on March 4, 2015 to Vendor for Review	CBI – Draft notes from a call with GE Water on March 4, 2015 to discuss recent advancements in the biological treatment system. Notes are being provided to GE for review and comment.
6216	SE06335	Meeting Materials – CBI Notes from Call with GE Water on March 4, 2015	CBI. Notes from a call with EPA and GE Water on March 4, 2015 to discuss their biological treatment technology.